

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

Robert
120191

FILE: B-208973

DATE: December 27, 1982

MATTER OF: Southwest Truck Body Company

DIGEST:

GAO will not consider a protest by the second low bidder that the agency failed to verify an allegedly mistaken low bid properly beyond advising the procuring agency of a possible mistake for verification purposes. Only the contracting parties--the Government and the firm in line for award--are in a position to assert rights and present evidence to resolve mistake-in-bid questions.

- " Southwest Truck Body Company protests any award of a contract to Shoals American Industries, Inc., under invitation for bids (IFB) No. DAAE07-81-B-5676 issued by the Department of the Army. The IFB concerns the procurement of 677 semi-trailers. Southwest contends that any contract between the Army and Shoals would be invalid because the Army's contracting officer is on notice of a possible mistake in Shoals' low bid, yet allegedly has failed to request proper verification of Shoals' bid as required by regulation. We dismiss the protest.

The Army reports that its contracting officer requested that Shoals check its bid for mistake. Shoals discovered mistakes in its bid, consisting of 17 errors of addition or multiplication, and requested correction. In accordance with Defense Acquisition Regulation § 2-406 (1976 ed.), the Army granted Shoals permission to correct its bid. Since Shoals' bid, as corrected, remains low, the Army is prepared to make award to that firm. Southwest, however, argues that the Army's request for verification of Shoals' bid was inadequate because all possible errors in Shoals' bid, as identified by Southwest, have not been brought to the attention of the low bidder.

Under the mistake-in-bid procedures, a contracting officer who knows or should know of the possibility of a mistake in the low bid must request verification from the

bidder. Once verified, the bid generally may be accepted with confidence that the bid price actually reflects the bidder's intention. If the bidder responds by claiming a mistake (or claims mistake after award, alleging that the verification request was inadequate), the bid may be withdrawn (or the contract reformed) upon a clear and convincing showing of mistake; the bid may be corrected upward if it remains low bid when the firm also clearly shows the bid price actually intended. See, e.g., 42 Comp. Gen. 723, 724 (1963).

Mistake-in-bid verification and correction procedures afford the Government the financial benefit of accepting a corrected low bid, instead of permitting the withdrawal of the uncorrected mistaken bid, while at the same time not prejudicing other bidders who remain higher even after upward correction of the low bid. We do not believe that higher bidders should have the right to insist that the Government reject the low bid and forego award at a lower price on the basis of their view that the bid is so low that it must be mistaken. See B-148117, March 22, 1962. Rather, only the contracting parties--the Government and the firm in line for award--are in a position to assert rights and bring forth all necessary evidence to resolve mistake-in-bid questions. Engineering Research, Inc., B-187067, August 6, 1976, 76-2 CPD 134.

Moreover, consideration of a higher bidder's protest in effect would necessitate that we judge whether the lower bid appears unreasonably low, and if it does, whether the Government must reject it. We consistently have stated, however, that the submission of a bid which a competitor considers too low does not constitute a legal basis for precluding a contract award. Contra Costa Electric, B-206487.2, May 7, 1982, 82-1 CPD 440. (Of course, even a verified low bid may not be accepted if it would be unconscionable to require performance at that price. See 53 Comp. Gen. 187 (1973).) The rejection of a bid as unrealistically low requires a determination that the bidder is not responsible, i.e., not capable of performing at the bid price. Hybrid Abstracts, B-207083, May 24, 1982, 82-1 CPD 488. That determination is left to the sound discretion of contracting officials, and consequently we do not review affirmative responsibility determinations except in limited circumstances, which are not involved in this type of case. See Bowman Enterprises, Inc., B-194015, February 6, 1979, 79-1 CPD 121.

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We therefore will not consider a protest that the low bid is mistaken beyond our advising the agency concerned that, for purposes of verification, the possibility of mistake has been suggested. Potomac Industrial Trucks, Inc., B-188146, January 21, 1977, 77-J. CPD 45. Since the contracting officer has sought and received verification, and has been furnished copies of Southwest's submissions to our Office, no further action on our part is necessary.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel